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November 4, 2002

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Ms. Marlene Dortch
Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Attention: Lauren Kravetz Patrich, Wireless Telecommunications Bureau

Re: Petition for Waiver to Extend Divestiture Deadline

Dear Ms. Dortch:

Michael de León Hawthorne, Trustee of a trust holding an 18.132percent limited partnership interest in the Madison SMSA Limited Partnership, by his attorneys, hereby requests a waiver of the Commission's rules to extend the divestiture deadline. Pursuant to the most recent advice from Commission staff, no fee is required for the instant waiver request.

Please contact me at the number above if you have any questions or need further information.

Sincerely,

A handwritten signature in cursive script that reads 'Janet Fitzpatrick Moran'.

Janet Fitzpatrick Moran

Attachment

No. of Copies rec'd
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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NOV - 4 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	CC Docket No. 01-73
Joint Applications of Telephone and Data)	
Systems, Inc. and Chorus Communications,)	ITC-T/C-20010307-00128
Ltd. for Authority to Transfer Control of)	ITC-T/C-20010307-00129
Commission Licenses and Authorizations)	
Pursuant to Sections 214 and 310(d) of the)	ULS File Nos.
Communications Act and Parts 22, 63 and 90)	0000352422
of the Commission's Rules)	0003524326, <i>et al.</i>

To: Wireless Telecommunications Bureau

PETITION FOR WAIVER
TO EXTEND DIVESTITURE DEADLINE

Michael de León Hawthorne, the trustee ("Trustee") of the above-captioned wireless assets divestiture trust (the "Trust") hereby requests through counsel that the Federal Communications Commission (the "Commission") extend the duration of the Trust. As set forth below, in previous extension request filings, and in previous bi-monthly reports to the FCC, the Trustee has diligently attempted to divest the assets held by Trustee (the "Subject Interest") to a third party. However, due to the difficulty experienced by Trustee in attempting to sell the Subject Interest, especially during this extremely difficult market for communications interests, the Trustee requests that the Commission extend the current December 2, 2002 divestiture deadline for an additional 180 days. Such an extension will serve the public interest by providing additional time for the Trustee to identify an appropriate third party and divest the Subject Interest in an orderly manner.

I. BACKGROUND

As a condition to the approval of the transfer of control applications filed on February 8, 2001 and March 7, 2001 by Telephone and Data Systems, Inc. ("TDS") and Chorus Communications, Ltd. ("Chorus") (collectively, the "Parties") the Commission required the divestiture of certain overlapping interests in wireless licenses held by these parties.¹ To afford themselves sufficient time to promptly divest the interest in the

¹ See *Joint Application of Telephone and Data Systems, Inc. and Chorus Communications, Ltd.*, Memorandum Opinion and Order, 16 FCC Rcd 15293 (2001). Chorus was required to divest its interest in an F-Block PCS license, as well as its 18.132%

licenses, and so as not to delay closing of their merger, the Parties requested authority to transfer Chorus' indirect 18.132% minority interest in the Madison SMSA Limited Partnership to the Trust; an arrangement which would **allow** consummation of the Parties' merger without violating the Commission's cellular cross-ownership rule. (47 C.F.R. § 22.942). On August 10, 2001, the Commission issued an Order consenting to the formation of the Trust.² The Trustee and Mid-Plains Telephone, Inc. entered into an agreement (the "Trust Agreement") through which the Subject Interest was transferred to the Trust and the Trustee's obligations were memorialized. The Trustee took control of the Subject Interest on September 4, 2001, creating an original deadline of March 4, 2002 for divestiture. At the Trustee's request, the Commission granted an additional 180 days – until September 3, 2002 – to divest the Subject Interest.³ The Trustee subsequently filed a second extension request, and in response the Commission granted the Trustee an additional ninety days – until December 2, 2002 – to divest the Subject Interest.⁴

11. REQUEST FOR WAIVER TO EXTEND DIVESTURE DEADLINE

The Trust was originally anticipated to last six months, in accordance with the Commission's decision in its 1998 biennial review proceeding "that a licensee may use a trust for divestiture purposes if the trust is of limited duration (six months or less)."⁵ The Commission has stated that, if licenses transferred to the trust are not transferred from the trust before the trust expires, the licenses **will** be cancelled.⁶ As noted above, the Trustee was initially required to divest the Subject Interest by March 4, 2002. The Trustee requested a waiver of the Trust's expiration, which the Commission granted, extending the deadline until

interest in the Madison SMSA Limited Partnership, which holds ownership interests in cellular licenses for the Madison, Wisconsin MSA, the Janesville-Beloit, Wisconsin MSA, and Wisconsin 9B2 RSA.

² *Id.* Chorus filed an application to transfer control of its subsidiary's interest in an F-Block PCS license. See File No. 0000398367. Therefore, the instant request relates only to the Madison SMSA Limited Partnership interest currently held by the Trustee.

³ See FCC *Public Notice*, "Wireless Telecommunications Bureau Grants Request of Michael de León Hawthorne, Trustee, to Extend Divestiture Trust," Dk 02-525, released March 4, 2002. No parties filed comments in response to the request to extend the divestiture trust.

⁴ See FCC *Public Notice*, "Wireless Telecommunications Bureau Grants Request of Michael de León Hawthorne, Trustee, to Extend Divestiture Trust," DA 02-2117, released September 3, 2002. No parties filed comments in response to the request to extend the divestiture trust.

⁵ See *In the Matter of 1998 Biennial Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Report and Order*, WT Docket Nos. 98-205 and 96-59, GN Docket No. 93-252, FCC 99-244, 1999 WL 734848, at ¶117.

⁶ *Id.* at n. 263.

September 3, 2002. Despite the Commission's recent relaxation to the cellular cross-interest rules, divestiture of the Subject Interest is still required because the Subject Interest includes part of an interest in an RSA license. However, the Trust Agreement permits an extension of the Trust, upon approval of the Commission. In order to avoid any uncertainty regarding the Subject Interest, which would only add to the challenge of divesting the Subject Interest, the Trustee respectfully requests that the Commission act on the instant request on or before December 2, 2002.

As set forth in detail in previously filed Trustee Reports', since the Subject Interest was transferred to the Trust, the Trustee has worked diligently to divest the Subject Interest. Initially, the Trustee gathered information and created a due diligence "book," which contained data necessary for prospective purchasers to evaluate the Subject Interest. Thereafter, the Trustee actively marketed the Subject Interest to numerous prospective purchasers. Through the Trustee Reports, the Trustee has kept the Commission apprised of the details of his activities every sixty days, as required pursuant to the Trust Agreement and the Commission's Order consenting to the divestiture. During this time, prospective purchasers, including one broker in wireless interests, initiated customary due diligence inquiries related to the Subject Interest.

In its most recent report, the Trustee outlined a number of steps he has taken in order to enable more aggressive marketing of the Subject Interest, including requesting information to determine whether the Partnership would require additional capital contributions for the partners of the Partnership, and whether the Partnership would make distributions. The Trustee contacted Cingular regarding purchase of the Subject Interest. Since Cingular is the controlling partner in the Partnership, and controls capital calls and distributions, it is the party the Trustee has identified as most likely to have an interest in purchasing the Subject Interest.⁸ Notwithstanding these consistent efforts, the Trustee has received no offers to purchase the Subject Interest. Since the Subject Interest was transferred to the Trust in September 2001, difficult

⁷ See, Request for Confidentiality in Connection with Second Trustee Report in the Matter of Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd. for Authority to Transfer Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(b) of the Communications Act and Part 22.63 and 90 of the Commission's Rules, and Trustee Report, filed November 2, 2001, and subsequent reports filed January 2, 2002, March 1, 2002, April 30, 2002, June 28, 2002, August 27, 2002, and October 25, 2002. Copies will be provided upon request.

⁸ While the Trustee had anticipated that Cingular would purchase the Subject Interest – based upon preliminary discussions – prior to seeking the first extension, Cingular has since informed the Trustee that it is not interested in purchasing the Subject Interest.

economic conditions generally have prevailed, particularly in the wireless telecom sector. Although the Commission removed the spectrum cap, retention of the RSA cross-ownership rule has made carriers reluctant to invest in a partnership that holds interests in a cellular RSA license. Until carriers decide on transactions allowable under the relaxed spectrum cap rules that become effective in 2003, it is even more difficult to sell a minority interest. As the Trustee has noted before, selling a passive, non-controlling minority interest in a cellular partnership is inherently difficult, particularly when that Partnership has made very few distributions and has retained most of the Partnership's earnings. In fact, the Trustee believes the Partnership's recent commitment to make distributions of excess capital may be attributable to the Trustee's inquiry on this point. All of these factors have added to delays in divesting the Subject Interest.

In its earlier extension request, the Trustee set forth facts supporting the conclusion that the telecommunications industry as a whole has witnessed unprecedented reductions in value over the last year.⁹ The technology and telecom sectors have been further undermined by accounting scandals and corporate self-dealing.¹⁰ In the mobile wireless sector, the FCC has acknowledged increasing competition, noting that "equity analysts and other industry observers typically describe wireless price competition in the United States as 'competitive,' 'intense,' and 'aggressive.'"" In addition, investors have soured on wireless stocks, causing many companies to experience new lows in stock prices which, in turn, limits their ability to acquire cellular interests, especially non-controlling positions.¹² The Commission recently took official notice of the

⁹ "Telecom Sector May Find Past Is Its Future," Washington Post, July 8, 2002 at A01. ("About 500,000 people have lost their jobs. Dozens of companies have gone bankrupt. As much as half a trillion dollars in investments has evaporated. . . No one knows how much of the investment -- \$326 billion in stock and bonds, plus \$554 billion in bank loans -- has been destroyed, but it is surely a huge sum. . . at least 63 telecommunications companies have landed in bankruptcy since 2000, according to Bankruptcydata.com. As WorldCom, the nation's second-largest long distance company, struggles to survive, and as authorities probe the books at Qwest Communications International, which runs local telephone networks in 14 Western states, the most expensive failures may still lie ahead.")

¹⁰ "Few Buyers for WorldCom Mobile Biz," RCR July 1, 2002 at 1. ("Even if WorldCom could sell its [cellular resale, paging and MMDS] wireless assets, the company likely won't get a good price for any of them in a battered wireless market that took yet another hit once WorldCom's accounting errors were made public.")

¹¹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Seventh Report*, 17 FCC Rcd 12985 (2002).

¹² "Wireless Wreck on Wall Street," RCR Wireless News, June 17, 2002 at 1. ("The wireless industry suffered what could be its biggest hit on Wall Street Friday as a number of investment firms cut their investor recommendations on a majority of wireless operators' stock following a round of revised second quarter estimates provided by carriers . . . While wireless carriers' stocks have been falling steadily since the beginning of the year and some have suffered similar weekly hinges, this latest setback may be more than some investment firms and investors can stomach or justify. 'We have all but given up trying to predict when these stocks might recover, given the incredibly poor sentiment in the space at this time,' said Thomas Weisel Partners in a report . . .")

deterioration in the wireless sector.¹³ Moreover, recent studies submitted to the Commission in other proceedings indicate that the wireless market sector has deteriorated significantly even further within the last six months.¹⁴ Uncertainty regarding the regulatory environment after the spectrum cap is lifted (e.g., pending merger guidelines) has also been blamed for lack of consolidation in the wireless sector.¹⁵ This overall collapse of the wireless telecom market is clearly a factor clearly beyond the Trustee's control.¹⁶ However, that unprecedented deterioration in market value has contributed significantly to the delay in divesting the Subject Interest. Therefore, the Trustee is compelled to request a further extension of time to divest the Subject Interest.

The Commission has authority to grant a waiver of its rules if it finds that the underlying purpose of the rule would not be served and that grant of the waiver would be in the public interest.” The Commission has previously found that transfer of controlling interests in numerous markets to divestiture trusts is in the public interest.¹⁸ In the instant case, the Subject Interest involves only a passive, non-controlling, minority

¹³ See FCC *Public Notice*, “Commission Seeks Comment on Disposition of Down Payments and Pending Applications for Licenses Won During Auction No. 35 For Spectrum Formerly Licensed to NextWave Personal Communications Inc., NextWave Power Partners, Inc and UrbanComm-North Carolina, Inc.,” FCC 02-248, released September 12, 2002, at 4-5 (“[T]he state of capital markets for entities, including the applicants, engaged in the provision of wireless telecommunications services, as well as other telecommunications services, has continued to decline rapidly. . . Taking official notice of the status of the capital markets and other economic events . . .”).

¹⁴ “[S]ince April 1st 2002 the telecommunications sector has reached unprecedented lows and the cautious optimism of the spring this year has been replaced by an increasingly negative outlook. . .” Comments of Salmon PCS, LLC in Disposition of Down Payments and Pending Applications for Licenses Won During Auction No. 35 For Spectrum Formerly Licensed to NextWave Personal Communications Inc., NextWave Power Partners, Inc and UrbanComm-North Carolina, Inc., filed on October 11, 2002, at Exhibit 1, “The State of the Telecommunications Industry from March 31st, 2002 With Emphasis on the Wireless Voice Industry” BIA Financial Network, at 3; “This significant [Auction 35] contingent liability has adversely affected carriers’ ability to attract capital to fund new and enhanced service offerings and to acquire needed spectrum in other auctions or the secondary market. . .” Comments of Cingular in Disposition of Down Payments and Pending Applications for Licenses Won During Auction No. 35 For Spectrum Formerly Licensed to NextWave Personal Communications Inc., NextWave Power Partners, Inc and UrbanComm-North Carolina, Inc., filed on October 11, 2002.

¹⁵ “As January 1 Looms, Questions Surround Consolidation,” RCR Wireless News July 1, 2002 at 14. (“Wireless carriers that at one time were flush with cash bolstered by sky-high stock prices and limitless growth have seen the money well run dry and investors are fleeing anything having to do with wireless communications . . . several barriers may limit the combination of merger partners, including regulatory scrutiny and the pending merger guidelines from the FCC, especially in the near term.”)

¹⁶ The FCC has even solicited opinion on how it can help the floundering sector. FCC *Public Notice*, “FCC to Convene En Banc Hearing October 7th on Steps Toward Recovery in the Telecommunications Industry,” DA 02-2443 (rel. Sept. 30, 2002).

¹⁷ 47 C.F.R. § 1.925(b)(3)(i).

¹⁸ *GTE Corp.*, 15 FCC Rcd 11608 (WTB 2000); *Vanguard Cellular Systems, Inc.*, 14 FCC Rcd. 3844 (WTB 1999)

interest in a relatively small number of markets. Indeed, the Commission found that multiple extensions of time were in the public interest when such extension would allow an orderly disposition of the ownership interest.” Moreover, no parties have objected to, or even commented on, previously-filed extensions, indicating that no third party finds grant of an extension contrary to the public interest. Finally, the public interest would not be served by denying grant of the instant waiver request. The Subject Interest involves a limited partnership interest, rather than a licensee being operated by a Trustee. The Partnership, which is controlled by Cingular, continues to serve the public interest, and the fact that the Trustee is holding the limited partnership interest has no adverse impact on Partnership operations or service to the public. Further, in light of the impending removal of most of the spectrum cross-ownership rules, grant of the instant further waiver is not likely to set a precedent for future divestiture trusts. Moreover, the new rules, once they are in place, could create new buyers.

The Commission may also grant a waiver if the Commission finds that the applicant has no reasonable alternative.²⁰ Since the Trustee has consistently undertaken diligent efforts to make the Subject Interest more attractive and to sell the Subject Interest, but has had no offers due to circumstances beyond his control, the Trustee requests that the Commission grant the waiver request on this alternative basis.

The Trustee requests that the Commission consent to extend the duration of the Trust for an additional 180 days under the same terms and conditions as those contained in the Trust Agreement. The Trustee will continue his diligent efforts to identify a qualified purchaser with this additional time. Such an extension of the divestiture deadline would serve the public interest by, and would be consistent with, the Commission’s past practice of granting extensions to similarly situated trustees.

For the foregoing reasons, the Trustee requests a waiver of the Commission’s requirements governing the duration of divestiture trusts and an extension of the current December 2,2002 expiration date of the Trust. Specifically, the Trustee requests that this expiration date be extended an additional 180 days in

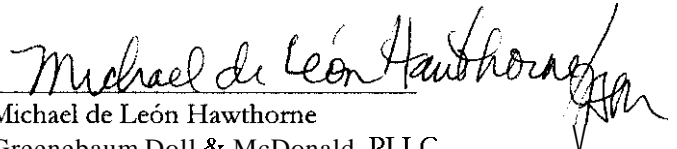
¹⁹ See, e.g., *VoiceStream Wireless Corp.*, 15 FCC Rcd 9128 (WTB 2000); *FCC Public Notice*, “Wireless Telecommunications Bureau Grants Request of Joseph J. Simons, Esq., Trustee, to Extend Divestiture Trust,” DA 01-467 (rel. February 21, 2001); *FCC Public Notice*, “Wireless Telecommunications Bureau Grants Request of Joseph J. Simons, Esq., Trustee, to Extend Divestiture Trust,” DA 01-1963 (rel. August 21,2001).

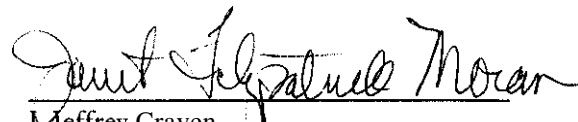
²⁰ 47 C.F.R. § 1.925(b)(3)(ii).

order to allow the Trustee additional time to identify a prospective purchaser and dispose of the Subject Interest in an orderly fashion.

Respectfully submitted,

MICHAEL DE LEON HAWTHORNE,
TRUSTEE


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